

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

FIRST GUARANTY MORTGAGE  
CORPORATION, *et al.*,<sup>1</sup>

Liquidating Debtors.

Chapter 11

Case No. 22-10584 (CTG)  
(Jointly Administered)

PACIFIC INVESTMENT  
MANAGEMENT  
COMPANY LLC and PIMCO  
INVESTMENTS LLC,

*Appellants,*

v.

KARI CRUTCHER,

*Appellee.*

Civil Action No. 1:24-cv-00001

Appeal from the Bankruptcy Court

**APPELLANTS' (I) STATEMENT OF THE ISSUES  
TO BE PRESENTED ON APPEAL, AND (II) DESIGNATION  
OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL**

Pursuant to Federal Rule of Bankruptcy Procedure 8009(a) ("Fed. R. Bankr. P.") and Rule 8009-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware,

---

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number in the jurisdiction were: First Guaranty Mortgage Corporation ("FGMC") (9575); and Maverick II Holdings, LLC ("Maverick") (5621). The service address for FGMC is 13901 Midway Road, Ste. 102-334, Dallas, Texas 75244.

Appellants Pacific Investment Management Company LLC and PIMCO Investments LLC (collectively, the “PIMCO Parties” or the “Appellants”), by and through undersigned counsel, hereby respectfully submit this (i) statement of the issue to be presented on appeal, and (ii) designation of the items to be included in the record in connection with their appeal from this Court’s *Memorandum Opinion* [D.I. 1087] (the “Opinion”) and *Order Denying Motion To Enforce Plan Injunction* [D.I. 1088] (the “Order”).

**I. Statement of the Issue to be Presented on Appeal.**

The issue in this appeal is:

(1) Whether the claim that Relator seeks to assert in the *qui tam* action against the PIMCO Parties was released by the Debtors under their plan and violates the plan injunction because that claim belonged to the Debtors’ bankruptcy estate?<sup>2</sup>

**II. Designation of Record on Appeal.**

Pursuant to Fed. R. Bankr. P. 8009(b)(1) the Appellants hereby certify that they are not ordering any transcripts at this time because all necessary transcripts have been prepared, are filed on the docket, and are designated in the following

---

<sup>2</sup> See, e.g., *Artesanias Hacienda Real S.A. de C.V. v. N. Mill Capital, LLC (In re Wilton Armetale, Inc.)*, 968 F.3d 273, 282–83 (3d Cir. 2020); *In re Emoral, Inc.*, 740 F.3d 875, 879 (3d Cir. 2014); *Bd. of Trs. of Teamsters Local 863 Pension Fund v. Foodtown, Inc.*, 296 F.3d 164, 169 (3d Cir. 2002).

designation of the record. The Appellants submit the following designation of items to be included in the record on appeal:<sup>3</sup>

ITEM No.	FILING DATE	ECF No.	CASE No.	PLEADING / DOCUMENT
1	6/29/22	19	1:23-cv-1261 <sup>4</sup>	Amended Complaint filed by Kari Crutcher (" <b><u>First Amended Complaint</u></b> ")
2	6/30/22	1	22-10584	Voluntary Petition for First Guaranty Mortgage Corporation (" <b><u>First Day Papers</u></b> ")
3	6/30/22	19	22-10584	Declaration of Aaron Samples in Support of Chapter 11 Petitions and First Day Pleadings (" <b><u>First Day Declaration</u></b> ")
4	6/30/22	21	22-10584	Amended Voluntary Petition for First Guaranty Mortgage Corporation (" <b><u>Amended First Day Papers</u></b> ")

<sup>3</sup> All items designated herein by the Appellants include all exhibits, schedules, attachments, copies of transcripts, and other documents included within each docket entry for each such item.

<sup>4</sup> Relator initially filed the *qui tam* action transferred to *United States of America ex rel. et al v. First Guaranty Mortgage Corporation*, No. 1:23-cv-1261 (D. Del. Nov. 6, 2023) as No. 1:16-cv-3812 (N.D. Ga. Oct 13, 2016).

ITEM NO.	FILING DATE	ECF NO.	CASE NO.	PLEADING / DOCUMENT
5	11/2/22	671	22-10584	Findings of Fact, Conclusions of Law, and Order (I) Approving Disclosures on a Final Basis and (II) Confirming the Amended Combined Disclosure Statement and Chapter 11 Plan of First Guaranty Mortgage Corporation and Debtor Affiliate (the <b><u>“Confirmation Order”</u></b> )
6	11/2/22	671-1	22-10584	Amended, Modified and Restated Combined Disclosure Statement and Chapter 11 Plan of First Guaranty Mortgage Corporation and Debtor Affiliate (the <b><u>“Plan”</u></b> )
7	11/7/22	678	22-10584	Notice of (I) Confirmation and Effective Date of the Amended Combined Disclosure Statement and Chapter 11 Plan of First Guaranty Mortgage Corporation and Debtor Affiliate and (II) Deadline Under the Plan and Confirmation Order to File Administrative Claims, Professional Fee Claims, and Rejection Claims

ITEM No.	FILING DATE	ECF No.	CASE No.	PLEADING / DOCUMENT
8	1/11/23	71-2	1:23-cv-1261	Second Amended Complaint and Demand for Jury Trial ("Second Amended Complaint")
9	7/13/23	881	22-10584	Transcript regarding Hearing Held 07/11/2023 re: Motion to Compel, Motion for Limited Relief
10	8/3/23	900	22-10584	Motion of Pacific Investment Management Company LLC and PIMCO Investments LLC to Enforce the Chapter 11 Plan and Confirmation Order
11	8/3/23	900-3	22-10584	Supplemental Second Amended Complaint and Demand for a Jury Trial (the "Supplemental Second Amended Complaint")
12	8/17/23	918	22-10584	The Liquidating Trustee's and Post-Effective Date Debtors' (I) Joinder to Motion of Pacific Investment Management Company LLC and PIMCO Investments LLC to Enforce the Chapter 11 Plan and Confirmation Order and (II) Reservation of Rights

ITEM NO.	FILING DATE	ECF NO.	CASE NO.	PLEADING / DOCUMENT
13	8/17/23	919	22-10584	B2 FIE XI LLC and LVS II SPE XXXIV LLC's Joinder to Motion of Pacific Investment Management Company LLC and PIMCO Investments LLC to Enforce the Chapter 11 Plan and Confirmation Order
14	8/28/23	930	22-10584	Objection by Kari Crutcher to Motion by Pacific Management Company LLC and PIMCO Investments LLC to Enforce the Chapter 11 Plan and Confirmation Order
15	9/1/23	941	22-10584	Reply of the PIMCO Parties in Further Support of Their Motion to Enforce the Chapter 11 Plan and Confirmation Order
16	9/5/23	951	22-10584	Order Granting Motion of the PIMCO Parties to Enforce the Chapter 11 Plan and Confirmation Order (the " <u>Enforcement Order</u> ")
17	9/7/23	956	22-10584	Transcript regarding Hearing Held 9/5/2023
18	9/19/23	966	22-10584	Notice of Appeal of Order Granting Motion of the PIMCO Parties to Enforce the Chapter 11 Plan and Confirmation Order

ITEM NO.	FILING DATE	ECF NO.	CASE NO.	PLEADING / DOCUMENT
19	10/4/23	985	22-10584	Designation of Record and Statement of Issues on Appeal of Enforcement Order Pursuant to Fed. R. Bankr. P. 8009(a)
20	10/5/23	988	22-10584	Motion of the PIMCO Parties for Contempt for Violations of the Court's Enforcement Order and Confirmation Order
21	10/12/23	991	22-10584	Appellees' Designation of Additional Items to be Included in the Record on Appeal
22	10/19/23	998	22-10584	Crutcher's Objection to the Motion of the PIMCO Parties for Contempt for Violations of the Court's Enforcement Order and Confirmation Order
23	10/13/23	108	1:23-cv-1261	Motion for Leave to File Leave to file [sic] Motion to Dismiss and Third Amended Complaint by Kari Crutcher
24	10/20/23	109	1:23-cv-1261	Notice of Consent to Dismissal of This Action

ITEM NO.	FILING DATE	ECF NO.	CASE NO.	PLEADING / DOCUMENT
25	10/27/23	111	1:23-cv-1261	The PIMCO Defendants' Opposition to Relator's Motion for Leave to File the Third Amended Complaint
26	10/31/23	1017	22-10584	Reply of the PIMCO Parties for Contempt for Violations of the Court's Enforcement Order and Confirmation Order <sup>5</sup>
27	11/3/23	1028	22-10584	Transcript regarding Contempt hearing held 11/2/23
28	11/13/23	1032	22-10584	Order (I) Denying the PIMCO Parties' Motion for Contempt; and (II) Setting Deadlines
29	11/16/23	1035	22-10584	Stipulation to Voluntarily Dismiss Appeal
30	12/1/23	1062	22-10584	Relator's Response to the PIMCO Parties' Motion to Enforce
31	12/1/23	1062-1	22-10584	[Revised Proposed] Third Amended Complaint (" <u>Third Amended Complaint</u> ")

<sup>5</sup> The Court deemed this a Motion to Enforce against the Third Amended Complaint. D. I. 1032.

ITEM NO.	FILING DATE	ECF NO.	CASE NO.	PLEADING / DOCUMENT
32	12/16/23	1070	22-10584	Reply of the PIMCO Parties in Further Support of Their Motion to Enforce the Confirmation Order Against the Proposed Third Amended Complaint in the Qui Tam Litigation
33	12/27/23	1085	22-10584	Transcript Regarding Hearing Held December 21, 2023 re: Omnibus
34	12/27/23	1087	22-10584	Memorandum Opinion concerning Motion to Enforce Confirmation Order (the " <u>Opinion</u> ")
35	12/27/23	1088	22-10584	Order Denying Motion to Enforce Plan Injunction (the " <u>Order</u> ")
36	12/29/23	1099	22-10584	Notice of Appeal of the Opinion and the Order
37	1/02/24	1102	22-10584	Appeal Transmittal Sheet re: Notice of Appeal

### III. Reservation of Rights

Appellants reserve any and all rights to amend this *Appellants' (I) Statement of the Issues to Be Presented on Appeal, and (II) Designation of Items to Be Included*

*in the Record on Appeal*, including, without limitation, to identify and to include additional issues and items for inclusion in the record on appeal.

Dated: January 12, 2024

/s/ Zachary J. Javorsky

Robert J. Stearn, Jr. (No. 2915)  
Zachary J. Javorsky (No. 7069)  
RICHARDS, LAYTON & FINGER P.A.  
One Rodney Square  
920 N. King Street  
Wilmington, DE 19801  
Telephone: 302-651-7700  
Email: [stearn@rlf.com](mailto:stearn@rlf.com)  
[javorsky@rlf.com](mailto:javorsky@rlf.com)

-and-

SCHULTE ROTH & ZABEL LLP  
Peter H. White  
Noah N. Gillespie  
555 13th Street NW, Suite 6W  
Washington, DC 20004  
Telephone: 202.729.7476  
Email: [pete.white@srz.com](mailto:pete.white@srz.com)  
[noah.gillespie@srz.com](mailto:noah.gillespie@srz.com)

-and-

Kristine Manoukian (No. 5509)  
Kelly V. Knight  
Paulina Piasecki  
919 Third Avenue  
New York, NY 10022  
Telephone: 212.756.2466  
Email: [kristine.manoukian@srz.com](mailto:kristine.manoukian@srz.com)  
[kelly.knight@srz.com](mailto:kelly.knight@srz.com)  
[paulina.piasecki@srz.com](mailto:paulina.piasecki@srz.com)

*Counsel for Pacific Investment  
Management Company LLC and PIMCO  
Investments LLC*